IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 4763 OF 2004

IN

CRIMINAL APPEAL NO.1326 OF 2004

Smt.Shamim Mirza Arif Baig .. Applicant

versus

The State of Maharashtra .. Respondent

...

Mr.S.R. Chitnis, Sr.Counsel and Haji Panna i/b S.R. Pasbola for the applicant.

Mr.D.P. Adsule, APP for the State.

CORAM : V.M. KANADE, J

DATED : 3rd December 2004.

P.C:-

1. Heard the learned counsel appearing on behalf of the applicant and the learned APP appearing on behalf of the State.

2. The applicant is convicted under the provisions of MCOC Act and sec.120B of the IPC and sentenced to suffer RI for five years on two counts and three years on one count and total fine of Rs.8 lakhs is imposed over and above the sentence which is awarded by the trial Court.

3. The prosecution case is that the applicant was involved in distribution of money to various accused in India and also involved in supplying information to gangsters abroad. The prosecution also alleged that she had entered into a conspiracy with other accused for the aforesaid purpose. In support of this case, the prosecution relied on 12 telegraphic conversations which were intercepted between 11th September 2001 to 6th March 2002 pursuant to an authorisation which was given by the competent authority on 14th September 2001 as also by the competent authority under the MCOC Act. The prosecution also relied on four E-mail messages which were retrieved by the Investigating Agency from the computer of the applicant. The prosecution examined in all 39 witnesses in support of the prosecution case. The learned counsel for the applicant submitted that the rules as envisaged and

framed pursuant to the directions given by the Apex Court in PUCL case have not been complied. He further submitted that the E-mail messages which were retrieved by the prosecution also are not admissible in evidence as the provisions of section 65B(2)(a)(b)(c)(d) and sub clause 4(a) and (b) have not been complied and as such, this evidence also is not admissible. It is submitted that apart from this evidence, there is no other evidence to prove the conspiracy and therefore, the applicant has made out a prima facie case for grant of bail. It is submitted that apart from that, the applicant is in jail since 20th March 2002 and more than 2 1/2 years have passed after she was arrested. He submitted that the applicant has already undergone more than 50% of the sentence and on that count also, the applicant is entitled to be released on bail.

4. Shri Adsule, learned APP appearing on behalf of the State has vehemently opposed application of bail. He has submitted that the provisions of telegraphic Act have been complied and the specimen voice sample of the accused was obtained which clearly showed that the sample voice of the accused and sample voice of wanted accused Chhota Shakeel tallied and as

such, the conversation clearly establish the case of conspiracy. It was further submitted that from the seizure of cash which was found at the residence of the applicant, there were various bundles on which the names of various accused were written which further establish the case of conspiracy and distribution of money to gangsters. He further submitted that the applicant is likely to abscond if she is released on bail.

5. In my view, the applicant has made out a prima facie case for grant of bail. The applicant further has already undergone nearly 2 1/2 years of sentence out of the five years which are awarded by the trial court. The applicant in any case is not likely to come up for hearing for quite some time. There is no statutory bar under the MCOC Act for not granting bail at the appellate stage. The applicant is found under the NDPS Act. Apart from that, it appears that there is no evidence besides the telephonic conversations which were intercepted and E-mail messages which were retrieved by the prosecuting agency.

6. Under these circumstances, the applicant is released on bail in the sum of Rs.25,000/- with one or

two sureties in the like amount. The applicant shall not leave this country without seeking permission from this Court. The applicant shall pay the find which is awarded. For the said purpose, three months time is granted for payment of the amount of fine. It is made clear that the applicant shall not be released on bail till the amount of fine is paid by her. It is further made clear that if the amount of fine is paid prior to the period of three months which is granted for the said payment, she shall be released as soon as the said amount is paid.

7. The applicant shall report to DCB CID Unit I once in a week between 11 a. to 5 p.m.

8. Parties to act on a copy of this order duly authenticated by the Court Sheristedar.

V.M. KANADE, J